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CLEARINGHOUSE RULE 99-088

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

Prefatory Comment

Because chs. GHSS 2, 3 and 4 are parallel in format and organization, comments to ch. GHSS 2 apply generally as well to chs. GHSS 3 and 4.

2. Form, Style and Placement in Administrative Code

a. The analysis of the rule is inadequate. While it is clearly unnecessary to specify all the details of the rule, the analysis does not begin to summarize the rule’s content.

b. In s. GHSS 1.01, first sentence, “rules in” should be deleted.

c. Section GHSS 1.02 (2) states that “(t)he following designs for licensure seals have been approved.”; but goes on to state “[*designs not included*].” The designs should have been included.

d. In s. GHSS 1.02 (6), should “prepared” follow “reports”?

e. In s. GHSS 1.02 (7), last sentence, “shall” may be deleted.

f. In s. GHSS 1.03 (1) (b), “currently-” should be deleted. [See s. 1.01 (9) (b), Manual.]

g. In s. GHSS 1.03 (2) (intro.), “A” should replace “Every.” The same change should be made to ss. GHSS 1.03 (3) and 1.04.

h. Sections GHSS 1.04 and 1.05 reference “licensee.” The term should be defined. Should the reference to “licensee” in s. GHSS 1.05 (2) (a) be to a “former” licensee?

i. In s. GHSS 1.05 (2) (b), it appears that “may” should be substituted for “shall.”

j. The first sentence of s. GHSS 2.01 may begin: “This chapter is adopted under authority in” In the second sentence, “the rules in” may be deleted.

k. Section GHSS 2.02 should begin: “An applicant for a professional geologist license shall file an application for licensure.”

l. It is suggested that s. GHSS 2.06 follow s. GHSS 2.02.

m. Section GHSS 2.03 (2) (m) uses semicolons to separate the specified areas; the other paragraphs of the subsection use commas. The provisions should be consistent in this regard. See, also, s. GHSS 3.03 (2) (c), which does not utilize semicolons, in contrast to the other paragraphs of that subsection.

n. In s. GHSS 2.05 (1), first sentence, “An applicant” should replace “All applicants.” In the second sentence, should “are” be substituted for “shall include”?

o. In s. GHSS 2.05 (2) (a), it is suggested that “at least a” replace “of not less than.” Consequently, “standing” should also be deleted.

p. Section GHSS 2.05 (3) (a) (intro.) should indicate whether “all of” or “any of” the requirements must be met. See, also, par. (b) (intro.) in this regard.

q. Consideration should be given to combining s. GHSS 2.05 (7) (a) and (c).

r. In s. GHSS 2.05 (8), it is suggested that “in taking the examination” be added to the end of the sentence.

s. Should the provisions of s. GHSS 2.06 (7) be in a separate section? Presumably, many of the application content requirements for licensure generally will not apply to licensure based on reciprocity.

t. The “slash” in s. GHSS 3.04 (3) (c) should be eliminated.

u. In ss. GHSS 3.06 (10) and 4.06 (10), “After December 31, 1998,” should be deleted since the date has already passed. This phrase was not used in s. GHSS 2.06 (10).

v. The last two paragraphs of s. GHSS 4.03 (2) are incorrectly designated pars. (e) and (f); they should be pars. (g) and (h).

w. In ss. GHSS 5.02 and 5.03, a tighter link needs to be made among the two sections and to s. 470.08, Stats. The apparent intent is that “unprofessional conduct” is a standard relating to the practice of professional geology, hydrology or soil science for purposes of s. 470.08 (2) (g), Stats.; a person who is found guilty of unprofessional conduct is subject to discipline under s. 470.08, Stats. The rule should be modified to state the intent more expressly.

x. The title to s. GHSS 5.03 should be revised to “**Unprofessional conduct.**” The introductory clause of that section should read: ““Unprofessional conduct” includes any of the following or aiding another person in violating any of the following:”. Consideration should be given to substituting “means” for “includes”; it is not clear how a credential holder could be disciplined for violating a standard that is not listed in s. GHSS 5.03 (unless the violation is covered elsewhere, e.g., another rule or another statute, in which case it would be covered under that other rule or statute).

y. Section GHSS 5.03 (3) makes reference to the “board.” The term should be defined.

z. Some of the conduct defined under “unprofessional conduct” is already covered under s. 470.08 (2), Stats. It is not clear why those provisions are being repeated in the rule.

aa. Should s. GHSS 5.03 (12) (b) be modified by adding “to one not qualified or capable of exercising that judgment” to the end of that paragraph? Also, all of the paragraphs in sub. (12) should end with a period.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The last sentence of s. GHSS 1.02 (7) should specifically reference any other statutory standards; if none exist, the sentence should be deleted.

b. In s. GHSS 1.05 (1), a more specific statutory cross-reference should be provided.

c. In s. GHSS 2.03 (1), first sentence, the statutory cross-reference is incorrect.

d. In s. GHSS 2.05 (2) (c), could the cross-reference to the rule be more specific?

e. In s. GHSS 2.05 (3) (b) (intro.), the statutory cross-reference is incomplete.

f. In s. GHSS 2.05 (5), both the statutory and administrative rule cross-reference should be more specific.

g. In s. GHSS 2.06 (3), the statutory cross-reference is inaccurate.

h. In s. GHSS 3.03 (1), second sentence, there is an incomplete internal cross-reference.

i. In light of the preceding comments, the statutory cross-references in chs. GHSS 3 and 4 should be reviewed for accuracy.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. GHSS 1.02 (5), should the second reference to “other sheets” be modified by “in the bound volume”?

b. The definition of “firm” in s. GHSS 1.03 (1) (a) should be compared with the use of the term “firms, partnerships or corporations” in s. 470.045, Stats. It does not appear that the terminology in the statute and rule is consistent. In neither case does the terminology appear to cover all possible business organizations (including sole proprietorships).

c. Section GHSS 2.01 refers to “registration” as a professional geologist. The statutes provide for licensure of a professional geologist. The rule should be reviewed in its entirety for inappropriate use of “registration” and related terms.

d. The last sentence of s. GHSS 2.03 (1) raises the question in which or in how many areas experience is required. Can the requirement be made more specific?

e. In s. GHSS 2.05 (2), why are both pars. (a) and (b) included? If one meets the second component of par. (b), one has then already met the requirement of par. (a).

f. In s. GHSS 2.05 (3) (a) 2., is “in addition to” the intended phrase? It appears that “substantially” should modify “equivalent.” See, also, in this regard, par. (b) 2.

g. Subdivision paragraphs a., b. and c. of s. GHSS 2.05 (3) (a) 3., are similar to, but somewhat different than, statutory requirements for licensure. Are the differences intended to be substantive? Perhaps a cross-reference to the pertinent statutory provisions is preferable.

h. In general, the eligibility requirements for the principles and practice examination are cumbersome and appear unnecessarily complicated.

i. Section GHSS 2.05 (7) (b) appears to refer to three examinations. Elsewhere in the rule, it appears that two examinations are required. Should this be clarified?

j. In s. GHSS 2.06, it appears that subs. (2) and (3) should be combined and, in particular, that sub. (2) should only refer to applicants applying under the pertinent statutory section.

k. Section GHSS 5.03 (4) refers to “gross negligence.” The concept of gross negligence is not currently recognized in Wisconsin common law. Consequently, should that term be defined?

l. Is s. GHSS 5.03 (9) already covered by subs. (4) and (5)?

m. In s. GHSS 5.03 (13), should “estimated” modify “costs and completion times”?

n. In s. GHSS 5.03 (14), the comma should be deleted.

o. The terminology utilized in s. GHSS 5.03 (16) should be compared with s. 470.045, Stats.

p. In s. GHSS 5.03 (18), should “conflict of interest” be defined? Subsections (18) and (19) are similar and consideration should be given to combining the subsections.

q. In s. GHSS 5.03 (24), should “unauthorized” modify “unlicensed”?